PV DAS

v.

DATUK KVS @ M KAYVEAS

HIGH COURT MALAYA, SEREMBAN
MOHD NOOR ABDULLAH J
[CIVIL SUIT NO: 22-72-96]
30 OCTOBER 1996

UNINCORPORATED ASSOCIATIONS: *Societies - Judicial review - Decisions of political party or its organs - Whether can be challenged in court - Method of resolution of conflict - Societies Act 1966, ss. 16, 18(k), 18B, 18C & 40*

The plaintiff and the defendant each claimed to be the lawful president of the People's Progressive Party of Malaysia ('PPP'). The plaintiff claimed he was elected at the Triennical Delegates Conference ('TDC') on 13 August 1995 whereas the defendant claimed his appointment was approved and endorsed at a Extraordinary Delegates Conference ('EDC') on 10 October 1993.

The plaintiff alleged that the defendant was not a member of PPP because of certain irregularities regarding his application form and that the defendant had been expelled from the Central Executive Committee ('CEC') on 25 May 1994. The plaintiff also alleged that the defendant's endorsement/election as President was unlawful as the EDC at which the defendant was endorsed as President had no power to do so under PPP's constitution, and that only the TDC had power to elect office bearers. It was further alleged that the defendant's illegal endorsement caused confusion and embarrassment to PPP's members and in order to remedy the situation, the plaintiff had convened a TDC on 13 August 1995 where he was elected President.

The plaintiff applied for: (i) a declaration that he was the lawful President of PPP; (ii) damages; and (iii) an injunction restraining the defendant from interfering in the affairs of PPP. The defendant applied for an order transferring the proceedings from the High Court at Seremban to Kuala Lumpur under s. 23 of the Courts of Judicature Act 1964 and for an order striking out the plaintiff's claim and his application for injunction under s. 18B & 18C of the Societies Act 1966 or O. 18 r. 19 of the Rules of the High Court 1980. The defendant alleged that the plaintiff had by his conduct acquiesced in the defendant's endorsement and that the dispute between the plaintiff and the defendant had been decided by the Registrar of Societies in the defendant's favour. The defendant also alleged that the plaintiff had been expelled from the CEC on 7 May 1995, before he had convened the TDC which had elected him President.

Held:

[1] There was no ground for transferring the case to Kuala Lumpur and therefore the defendant's application was refused.

[2] The court had no jurisdiction to entertain applications questioning the decisions of a political party or its office bearers which related to the affairs of the party. The election or approval and endorsement of the President were matters relating to the affairs of the party and were conclusive. The court had no jurisdiction to question the validity of such decisions and the plaintiff's suit was struck out.

[3] PPP was to resolve the impasse either by virtue of its constitution or under ss. 16, 18(k) and 40 of the Societies Act. If they failed to resolve the matter, the Registrar of Societies would be obliged to act under s. 16 of the Societies Act by requiring PPP to produce within one month, evidence of settlement and the lawful office bearers of the party, failing which the registrar would have to cancel the registration of the party.

[Application dismissed.]

Case referred to:
American Cyanamid v. Ethicon [1975] AC 396 ***(foll)***

Legislation referred to:
Courts of Judicature Act 1964, s. 23
Rules of the High Court 1980, O. 18 r. 19
Societies Act 1966, ss. 16, 18(k), 18B, 18C, 40

For the plaintiff - Rugber Singh; M/s Rugber Singh & Partners
For the defendant - PC Low; M/s Blanche Kayveas & Co

Reported by Anne Khoo

JUDGMENT

Mohd Noor Abdullah J:

The People's Progressive Party of Malaysia, hereinafter referred to as "PPP" at the material time was divided into three factions, each led by Dato Mak Hon Kam, Mr. PV Das – the plaintiff – and Dato M. Kayveas – the defendant – and each of them claimed to be the lawful President of PPP. The plaintiff claimed that he was elected as President by the delegates present at the Triennial Delegates Conference held at Dewan Jubli Intan Segamat on 13 August 1995 whereas the defendant claimed that his appointment as President was approved and endorsed by the delegates present at the Extraordinary Delegates Conference held at Wisma Tun Sambanthan, KL on 10 October 1993.

By a writ of summons endorsed with a statement of claim filed on 1 August 1996 the plaintiff prayed for a declaration that he is the lawful President of PPP together with his office-bearers and that the defendant and his office-bearers are not. He also claimed for damages. By an *ex parte* summons-in-chambers filed on an even date the plaintiff prayed for an injunction restraining the defendant generally from interfering in the management of the affairs of PPP. On 23 August 1996 the defendant applied firstly for an order transferring the proceeding to the High Court at Kuala Lumpur being the forum convenience and secondly for an order that the writ of summons and the statement of claim together with the application for an injunction be struck out under ss. 18B and 18C of the Societies Act, 1966 or under O. 18 r. 19 of the Rules of the High Court 1980.

Statement Of Claim

The plaintiff alleged that the defendant is not a member of PPP because his application form for membership contained false particulars with regard to his employment and marital status and was without a proposer and seconder; furthermore his membership card was issued with the forged signature of the then President of PPP, Mr. S.I. Rajah. It is also alleged that the defendant was expelled from the Central Executive Committee on 25 May 1994.

The PPP Constitution provided for the convening of an Extraordinary Delegates Conference whenever the Central Executive Committee or the President thought fit to convene same or otherwise at the written request of not less than 1/4 of the Branches of the party. It was at the Extraordinary Delegates Conference that the defendant was approved and endorsed as President and since the Constitution did not provide for the election of office-bearers at an Extraordinary Delegates Conference but was so provided at a Triennial Delegates Conference, the defendant's endorsement/election as President was therefore unlawful. The plaintiff then enumerated the unlawful actions and activities embarked by the defendant to strengthen and consolidate his position by opening new Branches, by gaining recognition of the Registrar of Societies through improper means, by changing the logo and name in Malay of the party and finally by planning to convene a Triennial Delegates Conference. As the defendant had by his actions brought the party into disrepute and had caused confusion and embarassment to the members the plaintiff in order to remedy the situation convened a Triennial Detegates Conference on 13 August 1995 at Jubli Intan Segamat where he was elected as President together with other office-bearers. In that event the plaintiff claimed that he was the duly elected lawful President of PPP and that the defendant was not.

Application For An Injunction

In support of his application for an injunction to restrain among other things, the defendant from generally interfering in the management of the affairs of PPP, the plaintiff affirmed the same facts as stated in the statement of claim particularly that the defendant is not a member of PPP and hence his purported approval and endorsement as President was unlawful.

Application To Strike Out The Suit/Injunction

The defendant in his supporting affidavit stated that the plaintiff by his actions and conduct had acknowledged and acquiesced in the membership and status of the defendant as reflected in the notes of proceeding at the trial of another related matter, in his letters to the Registrar of Societies and to the Prime Minister for senatorship, the acknowledgement by the ex-president of the defendant's membership, contribution and leadership contained in his speech, the plaintiff's own acknowledgement to the press that "the legitimate and legally constituted PPP members throughout the country at the Extraordinary Delegates Conference held on 10 October 1993 duly elected Mr. M. Kayveas a lawyer as the national President of PPP signed P.V. Das, PIS". The defendant further stated that the dispute between the plaintiff and the defendant and the office-bearers had been decided by the Registrar of Societies in the defendant's favour. Moreover the defendant is known to the plaintiff since 1980 and is married to Datin O'Leary whom the plaintiff claimed to be his daughter which was denied and found to be not true and in the circumstances the plaintiff's action is to embarrass the defendant. The plaintiff was expelled by the Central Executive Committee of the party on 7 May 1995 and it was after his expulsion that he held the Triennial Delegates Conference on 13 August 1995 which elected him as President but he did not gain the Registrar of Societies' recognition thereby frivolously and vexatiously instituting this action.

The Injunction

At the hearing of the *ex parte* application for an injunction on its returnable date on 15 August 1996 in the presence of Tun Salleh Abas and Mr. Rugber Singh for the plaintiff and Mr. P.C. Low for the defendant and Dato M. Kayveas in person, the plaintiff's counsel commented that the application had become an *inter parte* application (the defendant and his counsel being present and heard) to which the defendant responded by requesting for an adjournment to file an affidavit in reply within two weeks. The request was granted. The plaintiff applied orally for an interim injunction, the effect of which if granted was to restrain the defendant from participating at the scheduled general meeting/conference of PPP to be held on 3 September 1996 and this was objected by the defendant. After hearing their respective submissions and

applying the principles enunciated in *American Cyanamid v. Ethicon* [1975] AC 396 this court decided that the balance of convenience favours the plaintiff that the *status quo* be maintained and hence granted an interim injunction effective until the hearing and disposal of the *inter parte* application. At a subsequent hearing of an application by the defendant to set aside the interim injunction this court was informed that the interim injunction was suspended by Superior order and the defendant participated at the PPP Conference and was elected as the President of the party.

The defendant applied for the transfer of this case to Kuala Lumpur High Court under s. 23 of the Courts of Judicature Act 1964 and for the dismissal of the plaintiff's writ of summon and the statement of claim under ss. 18B and 18C of the Societies Act 1966.

At the outset the court asked the defendant if the underlying intention to transfer the case to Kuala Lumpur was due to lack of confidence in the person and the impartiality of the judge for otherwise there was no just ground to remove the case to Kuala Lumpur. After ascertaining the answer the court refused the application, a pragmatic decision to save everybody's time and cost. There was however a challenge to the second prayer to strike out the plaintiff's action.

Section 18C of the Societies Act 1966 provides:

> 18C. Decision of political party to be final and conclusive.
>
> The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

The relevant parts of the section may be paraphrased: the decision of a political party or any person authorised by it ... on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be ... called in question in any court on any ground, and no court shall have jurisdiction to entertain ... the validity of such question.

It is observed that the court has no jurisdiction to entertain an application which questions the decision of a political party or its office-bearers relating to the affairs of the party. The facts disclosed that the plaintiff was unanimously elected as President of PPP at the Triennial Delegates Conference

on 13 August 1995 at Segamat attended by 215 representatives from 95 out of 110 Branches of the party. The defendant's Presidency was approved and endorsed at the Extraordinary Delegates Conference on 10 October 1993 attended by 310 members and 98 delegates from 84 branches of the party. It was manifest that both Presidents enjoyed popular votes. It is my humble view that under the circumstance the election of the plaintiff as President of PPP and the approval and endorsement of the defendant's presidency of the PPP are the decisions of a political party within the meaning of s. 18C of the Act and I hold further that the business of electing the President or the approval and endorsement of the President are "matters relating to the affairs of the party". Therefore I hold that such decisions on such matters are final and conclusive decisions and the court has no jurisdiction to question the validity of such decisions. The party must resolve the impasse either by virtue of its constitution or under the Societies Act. This could be done by the rival factions agreeing to a fresh election of the Central Executive Committee of the Party under the supervision of the Registrar of Societies, or by consent the rival factions may refer their dispute to the Registrar of Societies. If they fail to do so in the manner above stated or in any other manner the Registrar of Societies is obliged to act under s. 16 of the Act by serving a notice to the PPP requiring it within one month to produce to him evidence of the settlement of the dispute and the lawful office-bearers of the party, failing which the Registrar of Societies may cancel the registration of the party.

It must be said here that the court is not concerned with the recognition by the Registrar of Societies towards one faction over the other as the Registrar of Societies is not a party to this action and any comment or criticism against the decision of the Registrar of Societies without the benefit of his representation is unfair. Let that be the subject matter of another litigation. For the moment the court is called upon to decide whether it has jurisdiction to determine the disputes between the plaintiff and the defendant. No is the simple and sure answer. The reason is simply this: The Societies Act says so and provides the mechanism for the settlement of such disputes under ss. 16, 18(k), 40. The plaintiff must pursue the domestic remedies available to him under its constitution and initiate the mechanism under the Societies Act. At this juncture this court decides that it has no jurisdiction to question the validity of the decision of the party and therefore strike out with cost the plaintiff's application and suit.